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sue after the debt has been paid. *Berthold v. Holman*, 12 Minn. 335; *Corbin v. Reed*, 43 Ia. 459. It is on this ground that the decision in the principal case is to be placed.

VESTED, CONTINGENT AND FUTURE INTERESTS — IMPLICATION OF TRUST TO PRESERVE CONTINGENT REMAINDER. — The testator devised property to his widow for life, and after her death to the children of his two sons. Of the two sons of the testator one died childless before the death of the mother, and the other had no children at the time of her death. *Held*, that the court will imply a trust and appoint trustees to preserve the contingent remainder. *Hayward v. Spaulding*, 71 Atl. 219 (N. H.).

A limitation will always be construed as a contingent remainder, if possible, instead of as an executory devise, even if the gift fails on such construction. *White v. Summers*, [1908] 2 Ch. 256. Where a remainder is limited to a person not in being or not yet ascertained, it is contingent. *Hopkins v. Keazer*, 89 Me. 347. And if a contingent remainder does not vest during the continuance of the particular estate or at the instant of its determination, the remainder fails. *Archer's Case*, 1 Co. 66 b. To prevent this the testator must expressly interpose an estate to trustees to preserve the contingent remainder. *Perceval v. Perceval*, L. R. 9 Eq. 386. A different rule seems to prevail in New Hampshire. There the courts will not apply the technical rules of contingent remainders to defeat the intention of the testator, and they will give effect to his intention, unless it is illegal or impossible, regardless of the particular form of words used. *Kennard v. Kennard*, 63 N. H. 303. Thus in the principal case the court implies a direction to trustees to preserve.

WAR — MILITARY PERSONS AS CONTRABAND OF WAR. — During the late Russo-Japanese war the plaintiffs reinsured a ship with the defendants and a clause of the policy warranted against "contraband of war." The ship, with two disguised Russian officers on board and bound for a Russian port, was captured and condemned by a Japanese prize court for carrying "contraband persons." The plaintiffs sued on the policy. *Held*, that the plaintiffs may recover. *Yangtze Ins. Ass'n v. Indemnity, etc., Assurance Co.*, 49 L. T. R. 498 (Eng., Ct. App., May 29, 1908).

For a discussion of this case in the lower court, see 21 HARV. L. REV. 636.

WILLS — CONSTRUCTION — IMPLIED CROSS LIMITATIONS. — A testator devised his property to trustees to pay the income to his daughters in equal shares, and in case any daughters should die leaving issue, then to such issue. The will further provided that from and after the death of the last surviving daughter and the majority of the testator's youngest grandchild the trustees should pay the *corpus* to the grandchildren in such shares as their mothers would have taken. One daughter died without issue. *Held*, that her share in the income goes to the surviving daughters and not to her representatives. *Macartney v. Macartney*, [1908] Vict. L. Rep. 649.

When there is a bequest to several as tenants in common with a gift over on the death of all, the disposition of the share of one who dies first depends on the construction of the will. Clearly the remainderman is not entitled; for the event on which he is to take — that is, the death of all — has not happened. *Scott v. Bargeman*, 2 P. Wms. 68. Nor should the testator's next of kin take; for a construction resulting in intestacy is to be avoided, even though a different construction results in making the disposition invalid as obnoxious to the rule against perpetuities. *Simpson v. Simpson*, 40 N. Y. L. J. 1203 (N. Y., App. Div., Dec. 1908). If the gift to the co-tenants is for life, the representatives of a deceased tenant cannot take, and hence a cross limitation will be implied. *Neighbour v. Thurlow*, 28 Beav. 33. But if there is an indefinite gift limited only by the gift over, then until the gift over takes effect the representatives of the deceased tenant are entitled. *Bignold v. Giles*, 4 Drewry 343. But this construction may be rebutted, as in the principal case,